

DEPARTMENT OF STATE REVENUE

01-20170199R.ODR

**Final Order Denying Refund: 01-20170199R
Gross Retail Tax
For the Year 2015**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

The Department did not agree that Principal of a former Indiana business was entitled to a refund of collection fees and costs incurred when the Department's collection agent sought to recover unpaid sales tax assessments. As between the Indiana business and the Department, it was the business's failure to file its sales tax returns and failure to notify the Department of its closing that led to the Department's efforts to recover the unpaid tax.

ISSUE**I. Tax Administration - Collection Costs and Fees.**

Authority: IC § 6-8.1-5-1(b); IC § 6-8.1-8-2(b); IC § 6-8.1-8-4; *P/S, Inc. v. Ind. Dep't of State Revenue*, 853 N.E.2d 1051 (Ind. Tax Ct. 2006).

Taxpayer argues that the Department erred in denying it a refund of collection costs and fees.

STATEMENT OF FACTS

Taxpayer is the principal of a former Indiana business. According to Taxpayer, the business was closed in May 2015. Taxpayer admits that the business failed to file its 2015 Indiana sales tax returns and failed to notify the Indiana Department of Revenue ("Department") that the business had closed.

The Department issued notices of proposed sales tax assessments based on the "best information available." The business failed to timely respond to the Department's notices. The matter was eventually referred by the Department to its collection agency. The Department's collection agency contacted Taxpayer. Taxpayer paid the outstanding liability of approximately \$940 consisting of sales tax and the agency's collection fees and costs.

On behalf of the business, Taxpayer requested a refund of the \$940 on the ground that the business had closed in 2015 and that it owed no additional sales tax.

The Department responded in a letter dated March 2017. The Department granted Taxpayer a refund of approximately \$790 but denied the remainder of the refund on the ground that "collection fees are nonrefundable."

Taxpayer disagreed with the Department's decision and returned the \$790 refund check asking that the check be reissued for the total amount of the originally requested \$940. Taxpayer simultaneously protested the Department's decision and requested an "administrative hearing by phone."

After reviewing the Department's records, the business's tax records, and Taxpayer's protest letter, this Final Order Denying refund results.

I. Tax Administration - Collection Costs and Fees.**DISCUSSION**

The issue is whether Taxpayer - on behalf of her former Indiana business - is entitled to a refund of approximately \$150 in collection fees and costs.

When the Department determined that Taxpayer's former business failed to file its 2015 sales tax returns, Indiana law permitted and required the Department to issue assessments based on the "best information available."

IC § 6-8.1-5-1(b) provides in relevant part:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department *shall make a proposed assessment* of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail. (*Emphasis added*).

When a proposed amount remains "unpaid," the Department adds a ten-percent penalty as provided for under IC § 6-8.1-8-2(b).

If the person does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable. When the department issues a tax warrant, a collection fee of ten percent (10[percent]) of the unpaid tax is added to the total amount due.

In addition, the Department is entitled to employ the services of a collection agent which - in turn - is entitled to impose penalties sufficient to compensate the collection agent for its own efforts. The statutory authority is found at IC § 6-8.1-8-4.

(a) When the department collects a judgment arising from a tax warrant, it may proceed in the same manner that any debt due the state is collected, except as provided in this chapter. The department may employ special counsel or contract with a collection agency for the collection of a delinquent tax plus interest, penalties, collection fees, sheriff's costs, clerk's costs, and reasonable fees established under subsection (b) if:

(1) an unsatisfied warrant has been issued by the department; or

(2) the department received a tax payment by check or other instrument drawn upon a financial institution, and the check or other instrument was not honored by that institution.

(b) The commissioner and the budget agency shall set the fee that the special counsel or collection agency will receive and payment of the fee shall be made after a claim for that fee has been approved by the department.

(c) The fees become due and owing by the taxpayer upon the filing of an amended warrant with the circuit court clerk adding the fee authorized by subsection (b) to the amount of the judgment lien under section 2 of this chapter.

In this instance, Taxpayer argues that the notices of proposed assessment were unwarranted because Taxpayer's business was closed in 2015.

However, the Department notes that the proposed assessments were sent to the address indicated in the Department's records under which the business had previously filed tax returns. It is these proposed assessments which eventually led to the issuance of the collection efforts to recover the unpaid tax. In addition, there is no indication that Taxpayer - or the business - timely responded to the initial proposed assessments.

The remaining issue is whether - as between the Department and Taxpayer - who should be responsible for paying the collection fees incurred by the Department's agent. The Department is unable to agree that it is the Department which should incur these fees or that the fee amount should be refunded to Taxpayer.

In *P/S, Inc. v. Ind. Dep't of State Revenue*, 853 N.E.2d 1051 (Ind. Tax Ct. 2006), the tax court explained that the taxpayer was responsible for paying collection fees because it had not rebutted the presumption that it received the notices which the Department mailed, and thus had not timely responded. *Id.* at 1054-55. The court explained that the taxpayer in that case merely asserted that it had not received notice and that the Department explained it had not received the notices back in return mail. *Id.* The court concluded that the taxpayer was presumed to have timely received the demand notices, and therefore was not entitled to a refund of collection fees that attached upon the issuance of the tax warrants. *Id.* at 1055.

There is nothing to indicate that either the Department or its agent ignored Taxpayer or the former business's directions in this matter. There is nothing to indicate that it was the Department or its agent's error which led to the efforts to collect the unpaid sales tax amounts.

As previously agreed to by the Department, Taxpayer's business is entitled to a refund of the \$790 but it is not entitled to the refund of the collection fees and costs.

FINDING

Taxpayer's protest is respectfully denied.

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